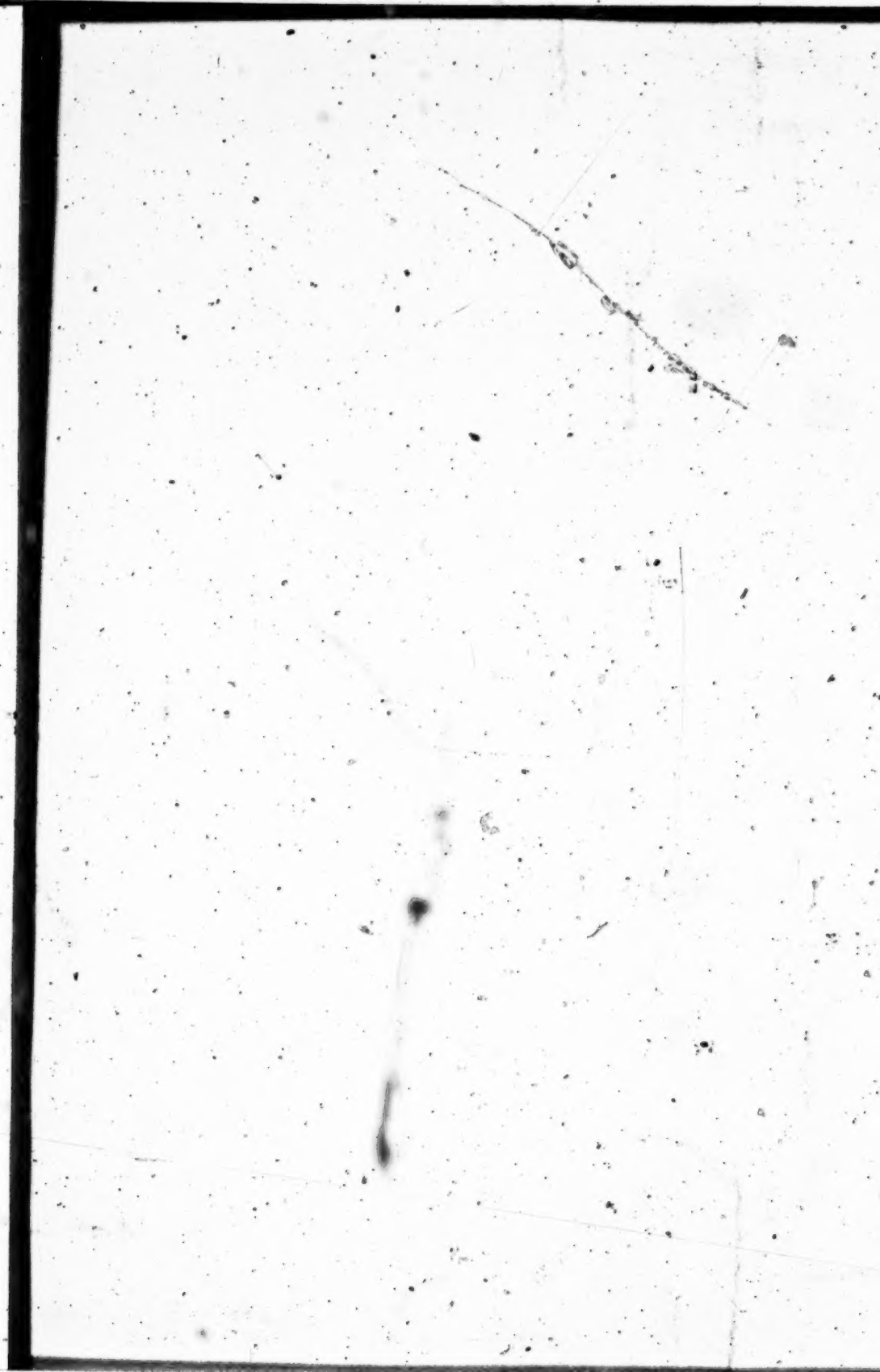

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Supreme Court of the United States

October Term, 1968

No. 321

VICTORIA A. HART,

Appellant,

versus

DAVID W. HEDRICK, Trustee in Bankruptcy of Seminole Park and Fairgrounds, Inc., Debtor,

Appellee.

PETITION FOR REHEARING ON APPELLANT'S PETITION FOR WRIT OF CERTIORARI

VICTORIA A. HART
Route 1
New Smyrna Beach, Florida,
Appellant,

DAVID W. HEDRICK, ESQ.,
Trustee
109 East Church Street
Orlando, Florida
Appellee.

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 321

VICTORIA A. HART,

Appellant,

versus

DAVID W. HEDRICK, Trustee in Bankruptcy of Seminole Park and Fairgrounds, Inc., Debtor,

Appellee.

PETITION FOR REHEARING ON APPELLANT'S PETITION FOR WRIT OF CERTIORARI

The Appellant presents this, her Petition for Rehearing on the Petition for Writ of Certiorari, based upon the following grounds:

FIRST. After review of the Record, counsel for the Appellant has determined that the Court may have been misled in its findings by the wording of the order of the Honorable Bryan Simpson, Circuit Judge, United States Court of Appeals, 5th Circuit, dated February 21, 1968 (*Appendix iv., pages 23 through 28, inclusive*), in reference to the letter received by the Appellant from her then attorney of record. Judge Simpson construed the letter as notification to the Appellant that her then attorney was withdrawing from the instant case. The letter, however, by its terms, could only be

notice that her attorney would not appear at a particular unrelated hearing, and could not in any wise be construed as being a withdrawal of counsel from the case (*Record, pages 100 & 101*).

SECOND. Counsel for the Appellant strongly urges to the Court, contrary to the Appellee's position, the importance of a determination of the question presented by her appeal, both to present litigants and appellants and future litigants and appellants, under the Federal Rules of Appellate Procedure.

This Court is well aware of the fact that from time to time the procedural rules are changed or amended, which changes affect the rights of present and future litigants. Multitudinous cases have arisen where the Court has had to determine the rights of litigants in the application of a new or amended rule to a cause then pending before the Court.

The cause of the Appellant was pending at the time and on the date that Section 25(a) of the Bankruptcy Act was amended by Rule 4(a), Federal Rules of Appellate Procedure, granting to appellants the right to establish excusable neglect and extend the time for filing their notice of appeal.

It is apparent that from time to time in the future, changes in the Rules will be made which will affect the rights of future litigants that may then be caught in the same or similar circumstances as the Appellant.

Therefore, it is the position of the Appellant that the

question of whether or not a change in the appellate procedure which affects the rights of present litigants and which will arise in the future under any subsequent changes in the rules, should apply immediately, upon the effective date, to a cause then pending before the Court.

The Appellant feels, that to prevent a harsh result and grave injustice, a decision should be made by this Court to determine this question for the Appellant and others similarly situated, and all future litigants. It is further urged that this is a question which should be resolved relating to and for the interest of the entire American Bar.

THIRD. The Appellant requests the Court to reconsider its previous Order, to issue the Writ, and to require a full scale Certiorari proceeding with oral argument on the question presented by this appeal.

Respectfully presented.

JAMES H. TUCKER
Attorney for Appellant
213 Silver Beach Avenue
P. O. Box 3065
Daytona Beach, Florida

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that the foregoing Petition for Rehearing on Appellant's Petition for Writ of Certiorari is confined to intervening circumstances of substantial or controlling effect, or to other substantial grounds available to Petitioner although not previously presented, and that said Petition for Rehearing is presented in good faith and not for delay, and that the same is restricted to the grounds above specified.

James H. Tucker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this Petition for Rehearing on Appellant's Petition for Writ of Certiorari has been served on DAVID W. HEDRICK, ESQ., Trustee, 109 E. Church Street, Orlando, Florida, by mail this ____ day of November 1968.

James H. Tucker